IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.143 of 1995

K.Natesan .. Appellant

-Vs-

State by the Inspector of Police,
Adiramapattinam Police Station,
(Crime No.742/92) .. Respondent

This Criminal Appeal is preferred under S.374 of The Code of Criminal Procedure against the judgment of the learned Sessions Judge, Thanjavur dated 6.1.1995 and made in S.C.No.26 of 1994.

!For Appellant : Mr.V.Bharathidasan

^For Respondent : Mr.V.M.R.Ravindran
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.

The appellant has assailed the judgment of the Court of Sessions, Thanjavur finding him guilty under Ss 302 and 201 of Indian Penal Code and awarding him life imprisonment for S.302 IPC and two years R.I. for S.201 IPC and ordering the sentences to run concurrently.
2. The appellant/accused stood charged under Ss 302 and 201 of I.P. C. alleging that he murdered one Abdul Kader by attacking him with kattai on his head at the burial ground situate on the Naswini River bank of Pazhanjur Village, in view of the refusal to pay Rs.25/- being the balance consideration towards the homosexual act of the deceased.
3. The facts of the prosecution case can briefly be stated as follows:
P.W.1 Viswalingam is the Village Administrative Officer of Pazhanjur Village. On 10.12.1992 at about 11.00 A.M., his Village Menial Pakirisamy informed him that a dead body mostly burnt upto neck and face was found on the western side of Naswini river bed. Immediately, P. W.1 proceeded to the spot and found the dead body as described by his menial. At about 12.00 hours, he gave Ex.P1 report to P.W.14 Pitchai Pillai, Sub Inspector of Police,

Adiramapattinam. P.W.15 Ramakrishnan, Inspector of Police, on the strength of Ex.P1, registered a case in Crime No.742 of 1992 under Ss 302 and 201 of I.P.C. He has despatched Ex.P17 express First Information Report to the concerned Court. He sent a requisition to the Government Hospital to conduct autopsy on the dead body at the said site. P.W.11 Dr.Selvarajan attached to Government Hospital, Adiramapattinam visited the site of incident, conducted autopsy over the said dead body and preserved the skull, bones and ashes to be sent for chemical analysis and superimposition of the skull. He found the following injuries.

8 cm x 2 cm x bone depth lacerated wound over left temporal and left parietal region with blood clot.

O/S There is red coloured Jelly like blood clot, over left temporal and parietal region and scalp. There is a fracture of temporal left and parietal left. The fracture extending to middle cranial fossa. The membrane underneath the fracture ruptured. Brain liquified. The injury is antemortem in nature.

P.W.11 Doctor has issued Ex.P10 postmortem certificate and has opined that the death is due to the injury to vital organ brain.

4. On the same day, at about 12.30 hours, P.W.9 Mohammed Haniffa of Middle Street, Adiramapattinam, presented Ex.P9 report stating that his son-in-law Abdul Kader who went in his T.V.S.50 XL TN 49-5675 on 9 .12.1992 at 11.00 hours, has not returned and hence, he was to be traced out. On that complaint, a case for "man missing" was registered in Crime No.743/92. A photograph of the missing person Abdul Kader produced by P.W.9 was seized under Form 95 on 10.12.1992. At about 1.30 P.M., the Investigation Officer inspected the site in the presence of P.W.1 and his menial Pakirisamy and prepared Ex.P2 observation mahazar and Ex.P18 rough sketch. He conducted inquest between 2.00 P. M. to 4.00 P.M. and prepared Ex.P19 inquest report. He recorded the statement of P.W.1. At about 6.00 P.M., the Investigation Officer recovered M.O.1 bloodstained earth and M.O.2 sample earth under Ex.P3 mahazar from the spot of occurrence. On 11.12.1992, the Investigation Officer examined the postmortem Doctor and other witnesses and recorded their statements. On 19.12.1992 at about 7.00 P.M., when P.W.1 was in his office, P.W.2 Veeraian and one Rajendran were also present. At that time, the accused appeared before P.W.1 and gave a statement as found under Ex.P4, which was recorded by P.W.1. P.W.1 prepared Ex.P5 report and produced the accused along with Exs.P4 and P5 before the Investigation Officer, who arrested the accused and recorded his statement. The Investigation Officer recorded the statement of P.W.1 and other witnesses. On 20.12.1992 at about 9.30 A.M. pursuant to his confession, the accused took the Inspector and witnesses to the river bed of Naswini river and produced M.O.3 kattai. The Investigation Officer recovered the same under Ex.P6 mahazar. The accused took the Inspector and witnesses to his house and produced M.O.4 money purse along with M.O.5 photograph of the deceased, which were recovered by the Inspector under Ex.P7 mahazar. Following the same, the accused produced M.O.6 T.V.S.50, which was recovered under Ex.P8 mahazar. The Investigation Officer recorded the statement of all the witnesses. The skull, bones and ashes of the deceased were sent for superimposition. The Inspector Kandasamy who succeeded to the office of P.W.1 5 Inspector, completed the investigation and filed the final report under Ss 302 and 201 of I.P.C. against the accused.

5. In order to prove the said charge, the prosecution examined 15

witnesses and marked 19 exhibits and 8 material objects. When the accused was questioned under S.313 of Code of Criminal Procedure, he denied the versions of the prosecution witnesses as false. No defence witness is examined. After careful consideration of the rival submissions and the evidence, the Court of Sessions found the appellant/ accused guilty under Ss 302 and 201 of I.P.C. and awarded the punished as stated above. Aggrieved appellant has brought forth this appeal.

6. Arguing for the appellant/accused, the learned Counsel would submit that the prosecution has failed to prove its case beyond reasonable doubt; that the extra judicial confession given to the Village Administrative Officer is totally inadmissible in evidence for want of adequate corroboration; that the extra judicial confession and the evidence of P.W.1 cannot be relied upon, since the procedure contained in Village Manual, which is mandatory, has not been followed; that the circumstances under which the extra judicial confession was made have to be taken into consideration; that it is pertinent to note that the extra judicial confession was not proved with the other circumstantial evidence available on record; that the so called extra judicial confession is in no way connecting the accused to the alleged act of murder; that in the absence of any direct or circumstantial evidence, the appellant cannot be convicted solely on that ground; that it remains to be stated that the medical evidence is not corroborating the so called confession; that P.Ws.5 to 7 have not mentioned anything about the murder, but have given evidence relating to travelling in the moped along with the accused and seeing the movie, and thus, their evidence cannot be taken to implicate the accused with the murder; that the conviction based solely on the extra judicial confession is not sustainable and liable to be struck down; that it is also pertinent to note that there is no motive established for murder, and the subsequent recovery is also not proper; that in the instant case, there are no circumstances indicating the nexus between the accused and the crime in question; that the reasons given by the lower court for convicting the accused are not sound and proper, and hence, the judgment of the trial court has got to be set aside, and the appellant be acquitted of the charges.

7. In reply to the contentions of the appellant's side, the learned Additional Public Prosecutor would submit that it is true that the prosecution has not adduced any direct evidence, but it has produced sufficient evidence proving all the circumstances, which would indicate the guilt of the accused; that P.W.9, the father-in-law of the deceased, has been examined, who has given a complaint that his son-inlaw the deceased was missing, and a case was registered on 10.12.1992 by the same police in Crime No.743/92; that he has well stated in the complaint that the deceased went in his moped, but not returned; that he has identified M.O.6 TVS 50 and M.O.4 money purse of the deceased; that only on the confession of the accused, those material objects have been recovered, but the appellant has not tendered any explanation how he came into possession of those material objects; that the prosecution has examined the witnesses who saw the appellant with the moped during that night of the occurrence; that the lower court was perfectly correct in relying on the extra judicial confession made by the accused to P.W.1 Village Administrative Officer, which was recorded in the presence of two witnesses; that apart from the V.A.O., one of the attesting witnesses has also been examined; that from their evidence, it would be clear that the accused has made the said confession even before his arrest, and thus, the prosecution has

adduced evidence corroborating all the material particulars found in the said confessional statement, and apart from that only after the confession, made by the appellant to the Inspector of Police, the above material objects were recovered by the Investigation Officer on the production of the same by the appellant, and they have also been recovered under a mahazar; that the witness has also been examined to prove those facts; that all the above would clinchingly show that it was the appellant/accused who committed the murder of the deceased and has taken away his properties viz. the moped and the cash with purse, and hence, the lower court was perfectly correct in holding that he was guilty of committing the murder of the deceased apart from screening the evidence to escape from the eye and clutches of law, and hence, the judgment of the lower court has got to be sustained, and the appeal be dismissed.

8. The appellant stood charged for committing murder of Abdul Kader, the son-in-law of P.W.9 and screening the entire evidence to escape from law. The prosecution has rested its case entirely on the circumstantial evidence. The respondent police has registered a case on 10 .12.1992 under Ss 302 and 201 of I.P.C. on a report given by P.W.1 Village Administrative Officer, Pazhanjur that an unidentified dead body was found in the burrial ground on the west bank of Naswini river at Pazhanjur Village. P.W.15, Inspector of Police, who took up the investigation, proceeded to the site of incident, and in the presence of the witnesses he prepared an observation mahazar and a rough sketch. Admittedly, a dead body almost burnt except head, and the face and scalp were charred and black in colour. The whole body was completely burnt and has become ashes. On requisition the postmortem was conducted by P.W.11 Dr.Selvarajan in the site itself, and Ex.P10 postmortem certificate was given, wherein the Doctor has opined that the death was due to the injury to the vital organ brain, and the time of death could not be given since the whole body except the head was burnt into ashes. Even in all the communications and requisitions, the Inspector of Police has stated that the identity of the person could not be known from the dead body. In order to prove the identity, the prosecution has examined P.W.9, the father-in-law of the deceased. But, even in his chief examination, he has categorically admitted that from the dead body he could not identify the person. During autopsy, P.W.11 Doctor has taken from the site of occurrence the skull, bones and ashes of the dead body and preserved them to be sent for chemical analysis. Accordingly they were sent to the Forensic Department through the concerned Court for the superimposition of the skull, as it could not be identified at the time of inquest and autopsy. No doubt a report as to the superimposition of the skull should have been received by the investigation agency. It is pertinent to note that the superimposition report was neither placed in the hands of the trial court nor marked during trial, which would lead to the presumption that the prosecution has not filed the same, since if filed, it would be against the case of the prosecution. In short it can be well stated that the prosecution has not proved the fact that the dead body found in the site of incident was that of Abdul Kader, who according to the prosecution, was murdered by the appellant-accused.

9. Much reliance was placed in the court below and equally here also on Ex.P4 extra judicial confession, given by the accused to P.W.1 on 19.12.1992. The lower court was also of the view that this was a strong piece of evidence connecting the accused and the crime in question, since P.W.1

Village Administrative Officer by whom the said statement of the accused was recorded, has thoroughly narrated the same, and P.W.2, the witness who was present at the time of the said confessional statement, has been examined. Needless to say that the extra judicial confession is a weak piece of evidence, and in order to act upon the same, the prosecution must tender sufficient and acceptable evidence on the material particulars therein. Rule 72 of the Criminal Rules of Practice reads thus:

"The Village Magistrate are absolutely prohibited from reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun."

A reading of the above Rule would clearly indicate that the sole object behind the same is to prevent the subsequent introduction of the false and manipulated extra judicial confessions using the Village Administrative Officers by the police force, after the commencement of the investigation, in order to make it appear that the prosecution case was true and genuine. In the instant case, on the report of P.W.1 Village Administrative Officer, a case under Ss 302 and 201 of I.P.C. was registered in Crime No.742/92 at 12.00 hours on 10.12.1992, and the investigation was proceeded. Apart from the said case, on the complaint of P.W.9 a case for man missing was registered in Crime No.74 3/92 on the same day. At this juncture, it has to be pointed out that the said extra judicial confessional statement was given by the accused only on 19.12.1992 i.e. after more than a week. Hence, without any hesitation, it has to be stated that the Court should not attach any importance to Ex.P4 extra judicial confession recorded by P.W.1.

10. Equally so is the other circumstance relied on by the prosecution that the recovery of M.O.6 TVS 50 and M.O.4 money purse. According to the prosecution, those material objects belonged to the deceased, and the accused took possession of the same, after causing the death of Abdul Kader, and on arrest, he gave a confessional statement, which led to the recovery of the same by the Investigation Officer, and hence, it is a valuable piece of evidence speaking the nexus between the accused and the crime. The Court may hasten to say that the confessional statement alleged to have been given by the accused to the Investigation Officer, though available, was not marked in evidence by the prosecution. In Ex.P9 complaint given by P.W.9, there is an interpolation as to the number of the moped. P.W.9 has categorically admitted that the words "TVS 50 in green colour" and the number of the vehicle have been subsequently added in the complaint. The Investigation Officer has deposed that though he verified the R.C. Book in respect of the said moped, he has not recovered the same and produced in court. The Court is able to see force in the contention put forth by the appellant's side that the non recovery of the said R.C. Book and the non production of the same before the court below was due to the fact that the said moped did not belong to the said Abdul Kader. Though the prosecution made its attempt to link the accused to the crime through the recovery of the vehicle, it has failed to prove that the said vehicle belonged to the said Abdul Kader. Apart from all the above, it has to be necessarily pointed out that originally a case in Crime No.742/92 under Ss 302 and 201 of I.P.C. was registered only on Ex.P1 report of the Village Administrative Officer, and subsequently, he recorded the confessional statement of the accused after 10 days, and the same V.A.O. has also attested Ex.P8 mahazar for the recovery of the said material object. All the above would cast a doubt on the confession and recovery of the material objects and

the documents which have come into existence in that regard. Without taking into consideration all the above, the lower court was carried away by the extra judicial confession relied on by the prosecution to find the accused guilty.

11. In view of the discussions made above, it can be stated in short that the prosecution has neither proved that the dead body found was that of Abdul Kader nor proved any one of the circumstances connecting the accused and the crime. Under such circumstances, without any hesitation, the Court has to necessarily hold that the prosecution has miserably failed to prove its case beyond reasonable doubt, and the judgment of the lower court has got to be set aside.

12. In the result, this criminal appeal is allowed, setting aside the judgment of the lower court. The appellant/accused is acquitted of the charges forthwith. The bail bond executed by the appellant, if any, shall stand cancelled.

Index: Yes
Internet: Yes
16-9-2002
To:
1. The Sessions Judge, Thanjavur.
2. The District Collector, Thanjavur.
3. The Director General of Police, Chennai 4.
4. The Superintendent, Central Prison, Trichy.
5. The Public Prosecutor, Madras.
6. The Judicial Magistrate No.1, Pattukottai.
7. The Judicial Magistrate No.1, Pattukottai,
Through The Chief Judicial Magistrate, Thanjavur at Kumbakonam.
8. The Inspector of Police, Adiramapattinam Police Station.

nsv/

P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.

Judgment
in
C.A.No.143 of 1995